

DEPARTMENT OF THE NAVY

NAVAL AIR SYSTEMS COMMAND

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W REPLY REFER TO

NAVAIRINST 12771.1

AIR-7.3.1.1

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NAVAIR INSTRUCTION 12771.1

From: Commander, Naval Air Systems Command

Subj: ADMINISTRATIVE GRIEVANCE SYSTEM AND PROCEDURES

Ref: (a) SECNAVINST 12771.1

(b) DOD 1400.25-M, Subchapter 771, Administrative Grievance System of Dec 96

(c) Guide No. 771-01, Guidance on Implementing the Administrative
Grievance System in the Department of Navy of 18 Aug 99

1. Purpose. To establish and implement the Department of the Navy (DoN) and the Naval Air Systems Command (NAVAIR), and Program Executive Officers (PEO), Administrative Grievance System (AGS) policy following references (a), (b) and (c). This instruction provides a procedure to be used by employees in filing grievances. It delegates authority, assigns responsibility, and identifies management officials authorized to make decisions on administrative grievances.

2. Cancellation. All administrative grievance instructions in effect prior to the date of issuance of this instruction, throughout NAVAIR are hereby cancelled.

3. Applicability

a. The AGS covers current civilian employees of the command. This instruction applies to civilian positions of the NAVAIR and the Program Executive Officers (PEO). It also covers former DoN employees with respect to matters arising during their previous employment providing that a remedy is available consistent with applicable law, rule, and regulation.

b. The AGS covers bargaining unit employees only when a matter covered by the AGS system cannot be grieved under a Negotiated Grievance Procedure (NGP), either because a NGP is not in effect at the relevant time, or because it does not cover the matter being grieved.

c. For members of the Office of General Counsel (GS-904, 905, 1221, and 1222 series), the head of the Business Unit (BU) is the General Counsel of the Navy.

d. Non-preference eligible Civilian Intelligence Personnel Management System (CIPMS) employees, employed under 10 U.S.C. 1590, may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less, if they have completed one year of current continuous service in the same or similar position in the Department of Defense (DoD) under other than a temporary appointment of two years or less except for terminations for national security reasons under Section 1590(e)(1) of 10 U.S.C. 1590. This AGS will provide for an impartial hearing in removal cases of such employees. The Defense Civilian Personnel

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Management Service's Office of Complaint Investigations may conduct these hearings on a reimbursable basis (reference b).

e. This AGS does not cover: '

(1) an applicant for employment who is not a present or former employee for whom a remedy can be provided;

(2) Civilian Mariner employees of the Military Sealift Command; or

(3) reinstatement and transfer eligibles that have applied for a position under a merit promotion program, non-citizens recruited overseas, and appointed to overseas positions, or Non-Appropriated Fund (NAF) employees.

4. Policy

a. Grievances presented by employees, under this process, will be considered expeditiously, fairly, and impartially; and decided as quickly as possible. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal.

b. Alternative Dispute Resolution (ADR) techniques should be used to resolve disputes consistent with the requirements of this instruction. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving techniques, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, peer review, and arbitration.

5. Definitions

a. Deciding official. The official designated to make decisions on grievances. The deciding official must be at a higher organizational level than any employee involved in the grievance. (Please refer to paragraph 12.a. below).

b. Grievance. A request by an employee (a written request under formal procedures, and an oral or written request under informal procedures) or a group of employees, for personal relief in a matter of concern or dissatisfaction, not excluded by this instruction, which is subject to the control of command management and relates to the employment of the employee(s). (Please refer to paragraph 14. a. and b. below).

c. Personal Relief. The specific remedy personally benefiting the grievant(s), and may not include disciplinary or other actions affecting another employee.

d. Grievance File. A separate file, which contains all documents, related to the grievance. It includes but is not limited to, the written grievance filed by the employee(s), any statements of witnesses, records or copies thereof, the report of the fact finder or other alternative dispute technique used, statements made by the parties to the grievance, and the agency decision. The

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grievance file must be maintained by the servicing Human Resources Office/Department (HRO/HRD) for 4 calendar years after the case is closed.

e. Fact-Finder/Ombudsman/Facilitator/Mediaior or Peer Review or any other ADR Procedure

May be appointed by the deciding official to act as a neutral in resolving the grievance. Anyone who serves in this capacity must not occupy a position subordinate to any official who recommended, advised, and made a decision on or who otherwise had any involvement in the matter being grieved.

f. Business Unit (BU). As used in this instruction refers to the Naval Air Systems Command Headquarters (NAVAIRHQ), PEO's, the Naval Air Warfare Center Weapons Division (NAVAIRWARCENWPNDIV), the Naval Air Warfare Center Aircraft Division (NAVAIRWARCENACDIV), the Naval Air Warfare Center Training Systems Division (NAVAIRWARCENTRASYS DIV) the Naval Aviation Depot (NAVAVNDEPOT), Cherry Point, the NAVAVNDEPOT Jacksonville, the NAVAVNDEPOT, North Island, the Naval Air Pacific Repair Activity (NAPRA), and the Naval Air Technical Data & Engineering Service Command (NAVAIRTECHDATAENG SERVCOM) North Island.

6. Grievance Coverage and Rights of Grievants

a. A grievance is any employment matter of concern or dissatisfaction relating to the employment of an employee(s) which is subject to the control of command management, including any matter on which an employee(s) alleges that coercion, reprisal, or retaliation has been practiced against him/her for filing a grievance under this instruction.

b. Grievants have the right to be accompanied, represented, and advised by a representative of their choice in processing a grievance under this instruction. A deciding official may disallow a grievant's representative for the reasons cited in paragraph 11 of this instruction.

c. A grievant(s) and his/her representative(s) shall have full access to relevant information and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation.

d. Grievant(s) and his/her representative(s) are entitled to a reasonable amount of official duty time, as determined by the deciding official; to prepare, present a grievance, and to communicate with management and personnel officials.

e. A grievance(s), or a portion of a grievance(s), may be canceled or temporarily suspended at the grievant's request.

f. A grievance(s) may be canceled when the grievant(s) or grievance(s) is excluded from coverage; fails to comply with applicable time limits or procedural requirements; requests actions be taken against another employee; or raises the matter under another formal dispute resolution process.

7 Jul 00 7. Grievance Exceptions (Issues Excluded) from the AGS

a. Issues raised by the employee in any other grievance, appeal, complaint, or dispute resolution process.

b. The content of published DoN regulations and policy.

c. Any matter covered by a NGP, or subject to formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (**OPM**), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC), or any matter that the employee files under another review or reconsideration procedure, or dispute resolution process with the DoN.

d. Non-selection for promotion from a group of properly ranked and certified candidates; or failure to receive a noncompetitive promotion.

e. Preliminary notice of an action that, if effected, would be covered under this grievance process.

f. The substance of an employee's performance elements, standards, or work objectives.

g. Determinations concerning awards, additional step increases recruitment or relocation bonuses, retention allowance, physician's comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers.

h. Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment.

i. Termination of a probationer, return of an employee serving supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period.

j. For Senior Executive Service (SES) or Senior Intelligence Executive Service (SEES) employees, performance evaluation and awards (including meritorious or distinguished executive rank awards), reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1 year period of probation or for less than fully successful executive performance, or for failure to be recertified, conditional rectification, or termination during probation for unacceptable performance.

k. Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, or an SES or SIES limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made.

1. Termination of a temporary or term promotion at a time other than above, provided the employee was informed in advance of the temporary nature of the appointment or promotion and

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the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay.

m. SES or Senior Level pay rate changes. `

n. A separation or termination action except as provided for CIPMS employees (please refer to 3.d. above).

o. Oral admonishments and letters of caution.

8. Grievance Against Another Activity. An employee of the organization may present a grievance to the head of another activity or command that took the action being grieved. Travel expenses and per diem are not authorized in the pursuit of a grievance. The grievance will be processed following the instruction of the activity against which the grievance is filed.

9. Combining Grievances. When two or more employees of the same BU have identical grievances (e.g., the dissatisfaction expressed and the relief requested are the same) they may be combined and processed as one grievance. The employees will be so notified and required to designate a common representative.

10. Deciding Officials

a. A deciding official must be assigned to a grievance.

b. The deciding official who is designated must be at a higher organizational level than any employee involved in the grievance.

c. The deciding official determines whether to accept, temporarily suspend, or cancel all or part of the grievance.

d. The deciding official determines how much official work time shall be granted concerning the grievance disposition.

e. The deciding official may disallow a grievant's choice of an individual as a representative for the reasons cited in paragraph 11 of this instruction.

f. The deciding official extends time frames when warranted by special circumstances.

g. The deciding official may appoint a fact finder or perform his/her own fact finding.

h. The deciding official fairly considers the grievance, and issues a final decision in writing on the merits within the prescribed time limits.

i. A deciding official's decision on the merits of the grievance is final and not subject to reexamination. This completes the AGS procedure. (Note: An employee may request that an individual at the next higher management level, if any, review a decision to cancel a grievance.)

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11. Disallowance of Grievant's Representative

a. The deciding official may disallow the choice of an individual as a representative when it would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the activity or command, or would give rise to an unreasonable cost to the federal government.

b. If a deciding official disallows the grievant's choice of representative, that decision may be grieved within 10 calendar days to the next higher level of management, unless the deciding official is the head of the BU. The decision on that grievance is final and is not subject to further review.

12. Responsibilities

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a. Headquarters and BU Level One Competency Heads, as well as BU Commanding Officers, are authorized to serve as deciding officials and are responsible for:

(1) deciding all grievances filed by employees under their BU except when they are personally involved in the events giving rise to the grievance. In such cases, the next higher level of management will act as the deciding official. The mere allegation of personal involvement does not suffice to remove the grievance from that level;

(2) may delegate authority to decide grievances to subordinate managers and supervisors to the extent they deem appropriate. Such delegation shall be in writing. The subordinate manager and supervisor must be organizationally at a level higher than any employee involved in the grievance or having a direct interest in the matter being grieved.

b. A

Grievant(s)

(1) must present the formal grievance to the deciding official in writing, and within the prescribed time limits. Each written grievance must provide a clear statement of the issue, and indicate the specific personal relief sought.

(2) May present an informal grievance either orally or in writing.

c. The servicing HRO/HRD is responsible for providing technical guidance, advice, and assistance on ADR, and administration of this instruction. The HRO/HRD is also responsible for maintaining the grievance file for a period of four 4 calendar years after the case is closed.

13. Time Limits. When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless it is a Saturday, Sunday, or a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the time limit shall be moved to the next regularly scheduled workday. All time limits are counted in calendar' days.

14. Processing Grievances. ADR techniques are strongly encouraged and should be used in the resolution of disputes. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early neutral evaluation, factfinding, settlement conferences, ombudsmen, peer review, and arbitration.

a. Problem Solving Process (informal process). Employees may choose to bypass this process and invoke the formal grievance process. (Please refer to paragraph 14.b. below).

(1) An employee may informally present a work-related problem either orally or in writing to their immediate supervisor before filing a formal written grievance. If the problem involves a matter or action directly involving that supervisor, the employee may present it to the next level supervisor. (Note: It is recommended that if the employee is grieving a written action, e.g. letter of requirement or disciplinary action, they **should first discuss the action with** the supervisor that effected the action).

(2) The work related problem must be presented within 15 calendar days following the date of the act or event giving rise to the grievance or from the date that the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(3) A supervisor must consider the employee's problem and attempt to resolve it within 15 calendar days, and no later than 30 calendar days, from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the grievance process.

(4) Where appropriate, the use of a neutral person acting in the capacity as a conciliator, mediator, or facilitator is encouraged.

(5) If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing.

(6) If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

(7) The time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

(8) The use of the problem solving process does not interfere with the time limits in filing a formal written grievance. If the employee used the problem solving process, and the grievance is not resolved, the grievant must file a formal grievance, in writing, no later than 15 calendar days from conclusion of this process.

(9) The servicing HRO/HRD is available to provide expert advice and assistance and should be contacted for help whenever appropriate.

b. Formal Grievance Process

(1) An employee may file a formal, written grievance with the deciding official when the problem is not resolved during the problem solving process or where the employee chooses to bypass that process and invoke the formal grievance process.

(2) The employee must present the grievance in writing 15 calendar days following the date of the act or event that the employee believes created the problem, or within 15 calendar days following the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.

(3) The employee's grievance must be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific remedy sought. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee.

(4) The employee's grievance must include copies of any documents in their possession related to the grievance; and the name, address, and phone number of his/her representative, if any.

(5) An employee may not grieve the same matter raised in any other grievance, complaint, or other dispute resolution process.

(6) The deciding official shall determine whether to join similar or identical grievances; whether to require, and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official work time shall be granted to the employee and his/her representative.

(7) The deciding official may also designate an impartial individual to examine a grievance and, when authorized, to make recommendations concerning its disposition.

(8) The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision.

(9) The deciding official shall issue the decision as soon as possible but normally no later than 60 calendar days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision shall be rendered no more than 90 calendar days from the filing of the grievance absent mutual agreement to extend the time limit to accommodate resolution of the dispute.

(10) If the deciding official fails to render a decision within 90 calendar days absent such mutual agreement, the grievant may request review by the next higher management level, if any.

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(11) The deciding official's decision on the merits of the grievance is final, and not subject to re-examination. However, a grievant may request that an individual at the next higher management level, if any, review the decision to cancel the grievance. The grievant's request for review of a decision to cancel a grievance must be submitted within 15 calendar days from the date of receipt of the decision to cancel the grievance.

(12) The servicing HRO/HRD is available to provide expert advice and guidance and should be contacted for help whenever appropriate.

15. Allegations of Discrimination. If an allegation of discrimination because of race, age, sex, color, national origin, religion, disability; or reprisal is raised in the formal grievance process, the deciding official will inform the grievant in writing that introduction of the allegation will serve to terminate processing of the matter under this guide. The grievant must be given the opportunity to withdraw the allegation and continue under the administrative grievance procedure or proceed under the discrimination complaint procedure commencing with the counseling stage. The grievant's decision must be documented in writing and made part of the grievance file. If the grievant decides to pursue the matter under the discrimination complaint procedure, that portion of the grievance shall be canceled. Notification will be provided to the grievant in writing concerning which portions of the grievance have been canceled. If there are no matters remaining in the grievance, the entire grievance shall be canceled, the grievant notified in writing, and the grievance file forwarded to the servicing HRO/HRD. The filing of an administrative grievance does not affect the requirement that a complainant must contact an EEO counselor within 45 days of the date that the complainant knew or should have known of the alleged discrimination.

16. Review. Civilian Personnel (AIR-7.3.1) will review this instruction annually on its anniversary date and revise as necessary.

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PAMELA O' DELL

By direction

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